

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHNNY Dickey,

Plaintiff,

v.

10 CAROLYN W. COLVIN, Commissioner of
Social Security,

Defendant.

NO. CV-12-3028-EFS

**ORDER GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION AND
DENYING PLAINTIFF'S SUMMARY-
JUDGMENT MOTION**

Before the Court, without oral argument, are cross-summary-judgment motions. ECF Nos. 17 & 21. Plaintiff Johnny Dickey appeals the Administrative Law Judge's (ALJ) denial of benefits. ECF No. 5. Mr. Dickey contends the ALJ's conclusions and findings of fact are not supported by substantial evidence and are contrary to the law. The Commissioner of Social Security ("Commissioner") asks the Court to affirm the ALJ's decision.

After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court affirms the ALJ's decision and therefore denies Mr. Dickey's motion and grants the Commissioner's motion.

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1 **A. Statement of Facts¹**

2 At the time of the administrative hearing, Mr. Dickey was 40
 3 years old. ECF No. 10 at 26. He did not complete high school but did
 4 earn a GED and has worked previously as an auto repair worker and
 5 general laborer. *Id.* at 26, 186. Mr. Dickey began using alcohol,
 6 marijuana, heroin, methamphetamine, and cocaine when he was twelve.
 7 *Id.* at 21. Mr. Dickey worked in December 2003, September 2004, and
 8 March 2005. *Id.* at 174. He stopped working in December 2003 and
 9 March 2005 because he was incarcerated, and was again incarcerated for
 10 about six months in 2009, and returned to jail in February 2010. *Id.*
 11 at 75, 77, 174.

12 **B. Procedural History**

13 In August 2008, Mr. Dickey applied for Supplemental Security
 14 Income benefits and Disability Insurance Benefits (hereinafter,
 15 "claims for benefits"), alleging disability beginning October 1, 2001,
 16 due to bipolar disorder, anxiety, and a left shoulder injury. ECF No.
 17 10 at 18, 154. Later, at the administrative hearing, Mr. Dickey
 18 amended his alleged onset date to May 13, 2008. The claims were
 19 denied initially on December 1, 2008, and were denied upon
 20 reconsideration on April 14, 2009. *Id.* at 18. Thereafter, he filed a
 21 written request for hearing on May 20, 2009. *Id.* On July 7, 2010, a
 22 video administrative hearing was held before ALJ Gene Duncan wherein
 23 Mr. Dickey appeared telephonically from jail and was represented by

24
 25 ¹ The facts are only briefly summarized. Detailed facts are
 26 contained in the administrative hearing transcript, the ALJ's
 decision, and the parties' briefs.

1 counsel. *Id.* On September 16, 2010, the ALJ denied Mr. Dickey's
 2 claims for benefits, determining that notwithstanding his severe
 3 impairments (left shoulder problem, depression, anti-social
 4 personality disorder, and poly-substance dependence), Mr. Dickey's
 5 residual functional capacity permitted a range of light work such as
 6 small products assembler and small products inspector. *Id.* at 20-27.
 7 The Appeals Council thereafter denied Mr. Dickey's request for review.
 8 *Id.* at 1-3.

9 On March 9, 2012, Mr. Dickey filed this lawsuit, claiming the
 10 ALJ's decision is not supported by substantial evidence. ECF Nos. 1 &
 11 5. On November 16, 2012, Mr. Dickey filed his Motion for Summary
 12 Judgment, ECF No. 17, and on January 11, 2013, the Commissioner filed
 13 her Motion for Summary Judgment, ECF No. 21.

14 **C. Disability Determination**

15 A "disability" is defined as the "inability to engage in any
 16 substantial gainful activity by reason of any medically determinable
 17 physical or mental impairment which can be expected to result in
 18 death or which has lasted or can be expected to last for a continuous
 19 period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),
 20 1382c(a)(3)(A). The decision-maker uses a five-step sequential
 21 evaluation process to determine whether a claimant is disabled. 20
 22 C.F.R. §§ 404.1520, 416.920.

23 Step one assesses whether the claimant is engaged in substantial
 24 gainful activities. If he is, benefits are denied. 20 C.F.R. §§
 25 404.1520(b), 416.920(b). If he is not, the decision-maker proceeds
 26 to step two.

1 Step two assesses whether the claimant has a medically severe
2 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),
3 416.920(c). If the claimant does not, the disability claim is
4 denied. If the claimant does, the evaluation proceeds to the third
5 step.

6 Step three compares the claimant's impairment with a number of
7 listed impairments acknowledged by the Commissioner to be so severe
8 as to preclude substantial gainful activity. 20 C.F.R. §§
9 404.1520(d), 404 Subpt. P App. 1, 416.920(d). If the impairment
10 meets or equals one of the listed impairments, the claimant is
11 conclusively presumed to be disabled. If the impairment does not,
12 the evaluation proceeds to the fourth step.

13 Step four assesses whether the impairment prevents the claimant
14 from performing work he has performed in the past by examining the
15 claimant's residual functional capacity. 20 C.F.R. §§ 404.1520(e),
16 416.920(e). If the claimant is able to perform his previous work, he
17 is not disabled. If the claimant cannot perform this work, the
18 evaluation proceeds to the fifth step.

19 Step five, the final step, assesses whether the claimant can
20 perform other work in the national economy in view of his age,
21 education, and work experience. 20 C.F.R. §§ 404.1520(f),
22 416.920(f); see *Bowen v. Yuckert*, 482 U.S. 137 (1987). If the
23 claimant can, the disability claim is denied. If the claimant
24 cannot, the disability claim is granted.

25 The burden of proof shifts during this sequential disability
26 analysis. The claimant has the initial burden of establishing a *prima*

1 facie case of entitlement to disability benefits. *Rhinehart v. Finch*,
2 438 F.2d 920, 921 (9th Cir. 1971). The burden then shifts to the
3 Commissioner to show 1) the claimant can perform other substantial
4 gainful activity, and 2) that a "significant number of jobs exist in
5 the national economy," which the claimant can perform. *Kail v.*
6 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled
7 only if his impairments are of such severity that he is not only
8 unable to do his previous work but cannot, considering his age,
9 education, and work experiences, engage in any other substantial
10 gainful work which exists in the national economy. 42 U.S.C. §§
11 423(d)(2)(A), 1382c(a)(3)(B).

12 **D. Standard of Review**

13 On review, the Court considers the record as a whole, not just
14 the evidence supporting the ALJ's decision. See *Weetman v. Sullivan*,
15 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d
16 525, 526 (9th Cir. 1980)). The Court upholds the ALJ's determination
17 that the claimant is not disabled if the ALJ applied the proper legal
18 standards and there is substantial evidence in the record as a whole
19 to support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
20 Cir. 1983) (citing 42 U.S.C. § 405(g)); *Brawner v. Sec'y of Health &*
21 *Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987) (recognizing that a
22 decision supported by substantial evidence will be set aside if the
23 proper legal standards were not applied in weighing the evidence and
24 making the decision). Substantial evidence is more than a mere
25 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.
26 1975), but less than a preponderance, *McAllister v. Sullivan*, 888 F.2d

1 599, 601-02 (9th Cir. 1989); *Desrosiers v. Sec'y of Health & Human*
2 *Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). "It means such relevant
3 evidence as a reasonable mind might accept as adequate to support a
4 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
5 (citations omitted). "[S]uch inferences and conclusions as the [ALJ]
6 may reasonably draw from the evidence" will also be upheld. *Mark v.*
7 *Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence
8 supports more than one rational interpretation, the Court must uphold
9 the ALJ's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.
10 1984).

11 **E. Analysis**

12 Mr. Dickey raises four main arguments in support of his
13 contention that the ALJ's findings were not supported by substantial
14 evidence. First, he argues the ALJ improperly rejected his bipolar
15 disorder and anxiety at step two of the sequential evaluation; second,
16 Mr. Dickey states the ALJ improperly rejected the opinions of his
17 treating and examining medical providers; third, Mr. Dickey claims the
18 ALJ improperly rejected his subjective complaints; and fourth, he
19 argues the ALJ failed to meet the step five burden to identify
20 specific jobs consistent with his functional limitations. Upon review
21 of the entire record, the Court rejects these claims and finds the
22 ALJ's determination that Mr. Dickey is not disabled is supported by
23 substantial evidence.

24 First, while Mr. Dickey maintains that the ALJ's rejection of
25 his bipolar disorder and anxiety at step two requires reversal, the
26 Court disagrees. The ALJ acknowledged that the record reflects a

1 diagnosis of anxiety, ECF No. 10 at 298, but correctly observed that
2 no medical source ever diagnosed bipolar disorder, *id.* at 22.
3 Additionally, because the ALJ proceeded beyond step two to consider
4 Mr. Dickey's residual functional capacity in steps 3 and 4, the ALJ
5 did not commit reversible error. See *Lewis v. Astrue*, 498 F.3d 909,
6 911 (9th Cir. 2007) (finding no reversible error where ALJ continued
7 beyond step two and included relevant restrictions in assessing
8 ability to work). Here, the ALJ included these relevant restrictions
9 when reasonably finding that Mr. Dickey could work with a limitation
10 of superficial public contact and interaction with co-workers, and a
11 restriction of working independently rather than in collaboration with
12 others or in intense interaction with others. ECF No. 23.
13 Accordingly, the Court finds the ALJ did not commit reversible error.

14 Second, the ALJ reasonably evaluated the opinions of Mr.
15 Dickey's treating and examining medical providers, Dr. Ho and Mr.
16 Clark. While Mr. Dickey argues the ALJ rejected Dr. Ho's opinion that
17 he suffered from chronic pain which was made severe by movement, the
18 term "severe" came from Mr. Dickey not Dr. Ho, *id.* at 247, and it was
19 Dr. Ho's opinion that Mr. Dickey could do medium work, *id.* at 251.
20 The ALJ's physical residual functional capacity finding was consistent
21 with Dr. Ho's opinion, and was, in fact, more favorable to Mr. Dickey
22 than Dr. Ho's opinion. Additionally, Mr. Dickey claims the ALJ's
23 improperly rejected Mr. Clark's opinion of marked and moderate
24 limitations. However, the Court finds the ALJ reasonably observed
25 that not only was Mr. Clark not an acceptable medical source, *id.* at
26 21-22, 25, but his observations were the most extreme of any other

1 source, *id.* at 25, and Mr. Clark's opinions were inconsistent with the
 2 opinions of an acceptable medical source who specialized in the
 3 relevant field of psychology, *id.* Ultimately, Mr. Dickey's argument
 4 is an alternative interpretation of the evidence, which because the
 5 ALJ's findings are reasonable and supported by substantial evidence,
 6 does not justify reversal. See *Allen v. Heckler*, 749 F.2d 577, 579
 7 (9th Cir. 1984).

8 Third, while Mr. Dickey claims the ALJ improperly rejected his
 9 own subjective complaints, the Court finds the ALJ reasonably, and not
 10 arbitrarily, discounted Mr. Dickey's subjective statements.
 11 Specifically, the ALJ found Mr. Dickey's assertions about disabling
 12 limitations were belied by his activities, ECF No. 10 at 22, 24, his
 13 assertions were inconsistent with the objective medical evidence, *id.*
 14 at 4, and his statements about drug use were inconsistent, *id.* at 21,
 15 49, 265, 298, 471. Because the ALJ articulated several valid reasons,
 16 supported by substantial evidence, for discrediting Mr. Dickey's
 17 assertions, the Court affirms the ALJ's credibility finding.

18 Finally, Mr. Dickey's claim that the ALJ's hypothetical to the
 19 vocational expert did not account for limitations opinioned by Mr.
 20 Clark and Dr. Moore, is unsupported by the record. As noted
 21 previously, the ALJ reasonably discounted Mr. Clark's opinion, and
 22 therefore his opinion need not be contained in the hypothetical. See
 23 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).
 24 Additionally, Dr. Moore opinioned that Mr. Dickey had no more than
 25 moderate limitations in mental functioning necessitating moderate
 26 limitations in interacting with others. ECF No. 10 at 67, 282-85.

1 The ALJ's hypothetical to the vocational expert included, and is
2 consistent with, this opinion, by including limitations to superficial
3 public contact and interaction with co-workers. *Id.* at 67.
4 Accordingly, the ALJ reasonably relied upon the vocational expert's
5 testimony that Mr. Dickey could do the unskilled assembler job.

6 **F. Conclusion**

7 In summary, the Court finds the record contains substantial
8 evidence from which the ALJ properly concluded, when applying the
9 correct legal standards, that Mr. Dickey does not qualify for
10 benefits.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 1. Mr. Dickey's Motion for Summary Judgment, **ECF No. 17**, is
13 **DENIED**.
- 14 2. The Commissioner's Motion for Summary Judgment, **ECF No. 21**,
15 is **GRANTED**.
- 16 3. **JUDGMENT** is to be entered in the Commissioner's favor.
- 17 4. The case shall be **CLOSED**.

18 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
19 Order and provide copies to all counsel.

20 **DATED** this 27th day of November 2013.

21 s/ Edward F. Shea

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EDWARD F. SHEA
23 Senior United States District Judge

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